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A Brief Summary Of  
The Agricultural Credit Act of 1987  
by

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The Agricultural Credit Act of 1987 was signed into law by President Reagan on January 6th, 1988. This is a comprehensive piece of legislation that will have major impacts on the Farm Credit System itself, and on FCS and Farmers Home Administration borrowers. There are four key features of this Act:

1. It gives the FCS up to \$4 billion in government assistance in 1988 and 1989 to guarantee bond payments, protect borrower stock, and make loans at reasonable and competitive interest rates.
2. The FCS will be restructured. Government aid will be channeled through the "Financial Assistance Corporation" which will replace the Capital Corporation. Federal Land Banks and Federal Intermediate Credit Banks within each region will be merged. There may also be mergers of these combined FLB/FICB's across district lines. Boards and member borrowers will be voting on whether to merge Federal Land Bank and Production Credit Associations. The Banks for Cooperatives may be consolidated into a single "National Bank for Cooperatives", or a "United Bank for Cooperatives" if fewer than eight approve the mergers. Some district BC's may chose to remain independent. The Bill also provides for a "FCS Insurance Corporation" to guarantee timely repayment of principal and interest on the System's bonds and notes. The required borrower stock is changed to "not less than \$1000, or 2 percent of the amount of the loan, whichever is less". The lower stock requirement will be offset by loan origination and other fees.
3. The Act creates a new secondary market for farm mortgages. Banks, S&L's, insurance companies as well as FCS lenders will be able to pool farm mortgages for sale to investors through the "Federal Agricultural Mortgage Corporation", commonly referred to as "Farmer Mac".
4. FCS lenders are required to restructure loans instead of foreclosing whenever restructuring is less costly than foreclosing. FmHA borrowers are given similar rights to restructuring. The Bill establishes an elaborate set of review procedures for loan restructurings, foreclosures, and other adverse servicing actions. FCS lenders must also provide a complete, written explanation of their tiered-rate plans. FCS borrowers whose farm real estate is repossessed are given "right of first refusal" to buy or lease their property back. FCS borrowers who are current with their payments cannot be foreclosed upon or required to reduce principal or pledge additional collateral. The following are near verbatim excerpts from sections related to the borrowers' rights provisions of the Bill that spell out eligibility requirements and procedures.

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## AGRICULTURAL CREDIT ACT OF 1987

## TITLE I: ASSISTANCE TO FARM CREDIT SYSTEM BORROWERS

**Sect. 101: Protection of Borrower Stock.**

FCS institutions shall retire eligible borrower stock at par value. "Eligible" means : Outstanding on the date of enactment, required to obtain a loan, purchased within 9 months of enactment, frozen after Jan. 1, 1983 or retired at less than par between Jan. 1, 1983 and the date of enactment.

**Sec. 102: Restructuring Distressed Loans.**

No FCS lender may foreclose or continue any foreclosure proceeding until the loan is considered for restructuring. The lender shall notify the borrower at least 45 days prior to foreclosure that the loan may be suitable for restructuring and include with such notice a copy of the restructuring policy and application materials.

The application for restructuring is a written request from a borrower, submitted on forms prescribed by the lender, accompanied by sufficient financial information and repayment projections to support a sound credit decision.

The determination of whether or not to restructure is based on:

- (A) whether the cost to the lender of restructuring is equal to or less than the cost of foreclosure;
- (B) whether all income above necessary and reasonable living and operating expenses is being applied to debt payments;
- (C) whether the borrower is capable of working out financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis;
- (D) whether restructuring will ensure that the loan will not have to be placed in nonaccrual status.

The cost of foreclosure includes:

- (A) the difference between the outstanding balance and the liquidation value of the loan taking into consideration repayment capacity and the liquidation value of collateral;
- (B) the estimated cost of maintaining the loan as a nonperforming asset;
- (C) legal and administrative expenses;
- (D) reduction in collateral value between initiation of foreclosure and disposition of the collateral;
- (E) all other costs of foreclosure or liquidation of the loan.

The cost of restructuring shall include:

- (A) the present value of interest income and principal foregone by the lender;
- (B) reasonable administrative expenses of finalizing and implementing the plan;
- (C) whether the borrower has presented a preliminary plan and cash flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur;
- (D) whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the lender.

All stock shall be applied to the loan; however the borrower shall be entitled to retain at least one share of stock to maintain membership and voting interest.

District boards have 60 days after enactment to develop their restructuring policies. The policy shall include an explanation of application procedures and the right of borrowers to seek review by a credit review committee.

Foreclosures are permitted if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the state.

#### **Sec. 103: Disclosure.**

FCS lenders must provide borrowers meaningful and timely disclosure of:

- (1) the current interest rate on the loan;
- (2) the amount and frequency by which rates can be increased on variable rate loans;
- (3) the effect of loan origination charges or stock purchases on the effective rate;
- (4) any change in the applicable rate;
- (5) a statement indicating that the stock is at risk;
- (6) a statement of loan options, with an explanation of the terms and borrowers' rights that apply to each type of loan.

#### **Sec. 104: Access to Documents and Information.**

FCS lenders must provide borrowers with copies of each appraisal of assets made or used.

#### **Sec. 105: Notice of Action on Applications for Loans or Restructuring.**

FCS lenders shall provide prompt written notices of actions taken, and if reduced or denied, the reasons for such action and the borrower's right to review.

**Sec. 106: Reconsideration of Actions.**

Each board shall establish one or more credit review committees, which shall include farmer board representation. In no case shall a loan officer involved in the initial loan decision serve on the review committee.

Requests for reviews must be submitted within 30 days for loan application reviews, and within 7 days for reviews of denials of restructuring. Applicants for reviews may appear in person before the review committee with counsel or other representative.

Appeals filed with review committees may include a request for an independent appraisal. Within 30 days of reviewing such a request, the review committee shall furnish the borrower with a list of 3 accredited appraisers from which the borrower shall select one to conduct the appraisal. The cost of the appraisal shall be borne by the borrower, and a copy of the appraisal shall be provided to the borrower.

**Sec. 107: Protection of Borrowers Who Meet All Loan Obligations.**

A FCS lender shall not foreclose, require reduction of principal or additional loan collateral, or enforce acceleration if the borrower has made all payments of principal, interest, and penalties.

If a loan is placed in nonaccrual status, the lender shall promptly notify the borrower of such action, and the reasons therefore.

**Sec. 108: Right of First Refusal.**

Agricultural real estate that is acquired by a FCS lender through foreclosure or deed in lieu shall be subject to right of first refusal of the previous owner to repurchase or lease the property. Within 15 days of electing to sell or lease the property, the lender shall notify the previous owner by certified mail of the right to:

- (A) purchase or lease the property at appraised fair market or rental value or;
- (B) offer to purchase or lease at a lower price or rental value. The lender must accept an offer to purchase or lease at appraised value and sell the property to the previous owner within 30 days for a sale or 15 days for a lease. Offers to purchase or lease at a lower price may be accepted or rejected. Notice of acceptance or rejection of such an offer must be given within 15 days. A lender that rejects an offer from a previous owner to purchase or lease at a lower price may not sell or lease the property to any other person at a price equal to or less than that offered by the previous owner or on different terms and conditions without first offering the previous owner the same opportunity. If acquired property is sold or leased by public offering, the previous owner must be notified, and given priority or nondiscriminatory treatment.

### **Sec. 109: Differential Interest Rates.**

A FCS lender offering more than one rate of interest shall, upon request:

- (1) provide a review of the borrower's loan to determine if the proper rate has been established;
- (2) explain in writing the basis for the rate charged; and
- (3) explain in writing how the credit status may be improved to obtain a lower rate.

## **TITLE VI: FARMERS HOME ADMINISTRATION LOANS**

### **Sec. 615: Debt Restructuring and Loan Servicing.**

FmHA shall modify delinquent Farmer Program loans to avoid losses, with priority consideration on writing-down principal and interest, whenever these procedures would facilitate keeping the borrower on the farm, and to ensure that borrowers are able to continue farming. To be eligible, the delinquency must be due to circumstances beyond the control of the borrower, and the borrower must have acted in good faith.

The borrower must present a preliminary plan demonstrating, with reasonable assumptions, that he will be able to:

- (A) meet necessary family living and operating expenses, and
- (B) service all debts, including those restructured.

The net recovery (to FmHA) on restructured loans must equal or exceed the net recovery from an involuntary liquidation or foreclosure. The recovery value for an involuntary liquidation shall be based on:

- (A) the current appraised value of the loan collateral, less
- (B) administrative, legal, and other expenses of liquidation and disposition.

The value of a restructured loan shall be based on the present value of the payments, using a discount rate not exceeding the current rate on 90-day Treasury bills. Within 60 days of receiving a written request for restructuring, FmHA must make the calculations, and notify the borrower in writing of the results. If the value of the restructured loan is greater than or equal to recovery value, FmHA shall, within 45 days, offer to restructure the loan.

If the value of the restructured loan is less than recovery value, and if, within 45 days, the borrower pays an amount equal to the recovery value the borrower's obligation shall terminate, except that FmHA may require the borrower to agree to recapture part or all of the difference between recovery value and fair market value (on the date of such agreement) if the borrower realizes a gain on the sale. In no event shall an agreement provide for recapture of an amount greater than the difference between recovery value and fair market value.

FmHA shall give priority to principal and interest write-downs, except when other creditors (other than those who are fully collateralized) representing a substantial portion of the borrower's total debt fail to agree to participate in the development of the restructuring plan or to participate in a state mediation program. Failure of other creditors to agree shall not preclude restructuring if it is the least cost alternative for FmHA.

As a condition of restructuring, the borrower may be required to enter into a shared appreciation arrangement (SAA). The term of SAA's shall not exceed 10 years, and shall provide for recapture of the difference between the appraised value of the real security property at the time of restructuring and the time of recapture. The amount of recapture shall be 75% of the appreciation in the value of the real security if recapture occurs within 4 years, and 50% if it occurs after 4 years. Recapture shall occur at the end of the term of the agreement, or sooner:

- (A) on sale of the real security (conveyances to surviving spouses excepted)
- (B) on repayment of the loans; or
- (C) if the borrower ceases farming.

No foreclosure shall be taken on loans deemed ineligible for restructuring:

- (1) until the borrower has been given the opportunity to appeal; and
- (2) the appeal process determines that the loan is not eligible for restructuring.

An appeal may include a request for an independent appraisal. The appeals division shall provide a list of three appraisers approved by the county supervisor, from which the borrower shall select one to conduct the appraisal. The cost of the appraisal shall be borne by the borrower, and a copy shall be provided to the borrower.

The future creditworthiness of, or adequacy of collateral offered by any borrower whose loans are restructured shall be determined without regard to such restructuring.